

108TH CONGRESS
1ST SESSION

H. R. 3140

IN THE SENATE OF THE UNITED STATES

NOVEMBER 20, 2003

Received

AN ACT

To provide for availability of contact lens prescriptions to
patients, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fairness to Contact
3 Lens Consumers Act”.

4 **SEC. 2. AVAILABILITY OF CONTACT LENS PRESCRIPTIONS**
5 **TO PATIENTS.**

6 (a) IN GENERAL.—When a prescriber completes a
7 contact lens fitting, the prescriber—

8 (1) whether or not requested by the patient,
9 shall provide to the patient a copy of the contact
10 lens prescription; and

11 (2) shall, as directed by any person designated
12 to act on behalf of the patient, provide or verify the
13 contact lens prescription by electronic or other
14 means.

15 (b) LIMITATIONS.—A prescriber may not—

16 (1) require purchase of contact lenses from the
17 prescriber or from another person as a condition of
18 providing a copy of a prescription under subsection
19 (a)(1) or (a)(2) or verification of a prescription
20 under subsection (a)(2);

21 (2) require payment in addition to, or as part
22 of, the fee for an eye examination, fitting, and eval-
23 uation as a condition of providing a copy of a pre-
24 scription under subsection (a)(1) or (a)(2) or
25 verification of a prescription under subsection (a)(2);
26 or

1 (3) require the patient to sign a waiver or re-
2 lease as a condition of verifying or releasing a pre-
3 scription.

4 **SEC. 3. IMMEDIATE PAYMENT OF FEES IN LIMITED CIR-**
5 **CUMSTANCES.**

6 A prescriber may require payment of fees for an eye
7 examination, fitting, and evaluation before the release of
8 a contact lens prescription, but only if the prescriber re-
9 quires immediate payment in the case of an examination
10 that reveals no requirement for ophthalmic goods. For
11 purposes of the preceding sentence, presentation of proof
12 of insurance coverage for that service shall be deemed to
13 be a payment.

14 **SEC. 4. PRESCRIBER VERIFICATION.**

15 (a) PRESCRIPTION REQUIREMENT.—A seller may sell
16 contact lenses only in accordance with a contact lens pre-
17 scription for the patient that is—

18 (1) presented to the seller by the patient or pre-
19 scriber directly or by facsimile; or

20 (2) verified by direct communication.

21 (b) RECORD REQUIREMENT.—A seller shall maintain
22 a record of all direct communications referred to in sub-
23 section (a).

1 (c) INFORMATION.—When seeking verification of a
2 contact lens prescription, a seller shall provide the pre-
3 scriber with the following information:

4 (1) Patient’s full name and address.

5 (2) Contact lens power, manufacturer, base
6 curve or appropriate designation, and diameter when
7 appropriate.

8 (3) Quantity of lenses ordered.

9 (4) Date of patient request.

10 (5) Date and time of verification request.

11 (6) Name of contact person at seller’s company,
12 including facsimile and telephone number.

13 (d) VERIFICATION EVENTS.—A prescription is
14 verified under this Act only if one of the following occurs:

15 (1) The prescriber confirms the prescription is
16 accurate by direct communication with the seller.

17 (2) The prescriber informs the seller that the
18 prescription is inaccurate and provides the accurate
19 prescription.

20 (3) The prescriber fails to communicate with
21 the seller within 8 business hours, or a similar time
22 as defined by the Federal Trade Commission, after
23 receiving from the seller the information described in
24 subsection (c).

1 (e) INVALID PRESCRIPTION.—If a prescriber informs
2 a seller before the deadline under subsection (d)(3) that
3 the contact lens prescription is inaccurate, expired, or oth-
4 erwise invalid, the seller shall not fill the prescription. The
5 prescriber shall specify the basis for the inaccuracy or in-
6 validity of the prescription. If the prescription commu-
7 nicated by the seller to the prescriber is inaccurate, the
8 prescriber shall correct it.

9 (f) NO ALTERATION.—A seller may not alter a con-
10 tact lens prescription. Notwithstanding the preceding sen-
11 tence, if the same contact lens is manufactured by the
12 same company and sold under multiple labels to individual
13 providers, the seller may fill the prescription with a con-
14 tact lens manufactured by that company under another
15 label.

16 (g) DIRECT COMMUNICATION.—As used in this sec-
17 tion, the term “direct communication” includes commu-
18 nication by telephone, facsimile, or electronic mail.

19 **SEC. 5. EXPIRATION OF CONTACT LENS PRESCRIPTIONS.**

20 (a) IN GENERAL.—A contact lens prescription shall
21 expire—

22 (1) on the date specified by the law of the State
23 in which the prescription was written, if that date is
24 one year or more after the issue date of the prescrip-
25 tion;

(3) notwithstanding paragraphs (1) and (2), on the date specified by the prescriber, if that date is based on the medical judgment of the prescriber with respect to the ocular health of the patient.

(c) DEFINITION.—As used in this section, the term “issue date” means the date on which the patient receives a copy of the prescription.

20 SEC. 6. CONTENT OF ADVERTISEMENTS AND OTHER REP-
21 RESENTATIONS.

Any person that engages in the manufacture, processing, assembly, sale, offering for sale, or distribution of contact lenses may not represent, by advertisement, sales

1 presentation, or otherwise, that contact lenses may be ob-
2 tained without a prescription.

3 **SEC. 7. PROHIBITION OF CERTAIN WAIVERS.**

4 A prescriber may not place on the prescription, or
5 require the patient to sign, or deliver to the patient a form
6 or notice waiving or disclaiming the liability or responsi-
7 bility of the prescriber for the accuracy of the eye exam-
8 ination. The preceding sentence does not impose liability
9 on a prescriber for the ophthalmic goods and services dis-
10 pensed by another seller pursuant to the prescriber's cor-
11 rectly verified prescription.

12 **SEC. 8. RULEMAKING BY FEDERAL TRADE COMMISSION.**

13 The Federal Trade Commission shall prescribe rules
14 pursuant to section 18 of the Federal Trade Commission
15 Act (15 U.S.C. 57a) to carry out this Act. Rules so pre-
16 scribed shall be exempt from the requirements of the Mag-
17 nuson-Moss Warranty—Federal Trade Commission Im-
18 provement Act (15 U.S.C. 2301 et seq.). Any such regula-
19 tions shall be issued in accordance with section 553 of title
20 5, United States Code. The first rules under this section
21 shall take effect not later than 180 days after the effective
22 date of this Act.

23 **SEC. 9. VIOLATIONS.**

24 (a) IN GENERAL.—Any violation of this Act or the
25 rules required under section 8 shall be treated as a viola-

1 tion of a rule under section 18 of the Federal Trade Com-
2 mission Act (15 U.S.C. 57a) regarding unfair or deceptive
3 acts or practices.

4 (b) ACTIONS BY THE COMMISSION.—The Federal
5 Trade Commission shall enforce this Act in the same man-
6 ner, by the same means, and with the same jurisdiction,
7 powers, and duties as though all applicable terms and pro-
8 visions of the Federal Trade Commission Act (15 U.S.C.
9 41 et seq.) were incorporated into and made a part of this
10 Act.

11 **SEC. 10. STUDY AND REPORT.**

12 (a) STUDY.—The Federal Trade Commission shall
13 undertake a study to examine the strength of competition
14 in the sale of prescription contact lenses. The study shall
15 include an examination of the following issues:

16 (1) Incidence of exclusive relationships between
17 prescribers or sellers and contact lens manufacturers
18 and the impact of such relationships on competition.

19 (2) Difference between online and offline sellers
20 of contact lenses, including price, access, and avail-
21 ability.

22 (3) Incidence, if any, of contact lens prescrip-
23 tions that specify brand name or custom labeled con-
24 tact lenses, the reasons for the incidence, and the ef-
25 fect on consumers and competition.

1 (4) The impact of the Federal Trade Commis-
2 sion eyeglasses rule (16 CFR 456 et seq.) on com-
3 petition, the nature of the enforcement of the rule,
4 and how such enforcement has impacted competi-
5 tion.

6 (5) Any other issue that has an impact on com-
7 petition in the sale of prescription contact lenses.

8 (b) REPORT.—Not later than 12 months after the ef-
9 fective date of this Act, the Chairman of the Federal
10 Trade Commission shall submit to the Congress a report
11 of the study required by subsection (a).

12 **SEC. 11. DEFINITIONS.**

13 As used in this Act:

14 (1) CONTACT LENS FITTING.—The term “con-
15 tact lens fitting” means the process that begins after
16 the initial eye examination and ends when a success-
17 ful fit has been achieved or, in the case of a renewal
18 prescription, ends when the prescriber determines
19 that no change in prescription is required, and such
20 term may include—

21 (A) an examination to determine lens spec-
22 ifications;

23 (B) except in the case of a renewal of a
24 prescription, an initial evaluation of the fit of
25 the lens on the eye; and

1 (C) medically necessary follow up examina-
2 tions.

3 (2) PRESCRIBER.—The term “prescriber”
4 means, with respect to contact lens prescriptions, an
5 ophthalmologist, optometrist, or other person per-
6 mitted under State law to issue prescriptions for
7 contact lenses in compliance with any applicable re-
8 quirements established by the Food and Drug Ad-
9 ministration.

10 (3) CONTACT LENS PRESCRIPTION.—The term
11 “contact lens prescription” means a prescription,
12 issued in accordance with State and Federal law,
13 that contains sufficient information for the complete
14 and accurate filling of a prescription, including the
15 following:

16 (A) Name of the patient.

17 (B) Date of examination.

18 (C) Issue date and expiration date of pre-
19 scription.

20 (D) Name, postal address, telephone num-
21 ber, and facsimile telephone number of pre-
22 scriber.

23 (E) Power, material or manufacturer or
24 both.

25 (F) Base curve or appropriate designation.

1 (G) Diameter, when appropriate.

2 (H) In the case of a private label contact
 3 lens, name of manufacturer, trade name of pri-
 4 vate label brand, and, if applicable, trade name
 5 of equivalent brand name.

6 **SEC. 12. EFFECTIVE DATE.**

7 This Act shall take effect 60 days after the date of
 8 the enactment of this Act.

Passed the House of Representatives November 19,
 2003.

Attest:

JEFF TRANDAHL,
Clerk.